

SENATE BILL REPORT

SB 5817

As of January 26, 2022

Title: An act relating to restricting the use of synthetic media in campaigns for elective office.

Brief Description: Restricting the use of synthetic media in campaigns for elective office.

Sponsors: Senators Frockt, Dhingra, Liias and Stanford; by request of Secretary of State.

Brief History:

Committee Activity: State Government & Elections: 1/26/22.

Brief Summary of Bill

- Requires a disclosure when any manipulated audio or visual media of a candidate is used in an electioneering communication.
- Creates a cause of action for candidates whose voices or likenesses appear in synthetic media distributed without disclosure.
- Provides exceptions for parody and news reporting.

SENATE COMMITTEE ON STATE GOVERNMENT & ELECTIONS

Staff: Samuel Brown (786-7470)

Background: Political Advertising. All political advertising must identify the sponsor of the advertisement. Political advertisements undertaken as independent expenditures or which are distributed within 60 days of an election must also disclose the five persons or entities making the largest aggregate contributions to the advertisement's sponsor of at least \$1,000, and the top three individual contributors to any of the top five donors which are political or incidental committees.

A person cannot sponsor, with actual malice, a defamatory statement in political advertising that:

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- contains a false statement of material fact about a candidate for public office;
- falsely represents that a candidate is an incumbent for the office sought; or
- falsely indicates that a candidate has the support or endorsement of an organization.

Synthetic Media. Advances in machine learning led to the development of technology where a person in an existing image or video is replaced with another person's likeness and techniques to generate new synthetic audio of a person's speech based on past recordings of the person. Media created through machine learning to falsely depict a person's speech or conduct are known as synthetic media or deepfakes.

Summary of Bill: Use of Synthetic Media. Synthetic media is an image or audio or video recording of a person's appearance, speech, or conduct, that has been manipulated to create a realistic or false image, audio, or video that:

- would appear to a reasonable person of a real individual, but did not occur in reality; and
- would cause a reasonable person to have a fundamentally different understanding of the content of the media than of the unaltered media.

An electioneering communication which contains synthetic media may not be distributed without a disclosure. The disclosure must state that the media has been manipulated and:

- for visual media, be printed in at least the largest font size of other text in the media or a size easily readable for the average viewer;
- for video media, appear for the duration of the video; and
- for audio media, be read in a clearly spoken manner and a pitch easily heard by the average listener at the beginning and end of the audio, and at least every two minutes during the audio, if applicable.

Exceptions are provided for:

- news media, if the news presentation acknowledges that the media may not accurately reflect the speech or conduct of the candidate; and
- satire and parody.

Cause of Action. A candidate whose voice or likeness appears in synthetic media distributed without the required disclosure within 60 days of an election may seek to enjoin distribution of the media and bring an action for general or special damages against the party distributing the media. Prevailing parties may be awarded attorneys' fees and costs. The plaintiff must establish a violation of the disclosure requirement by clear and convincing evidence.

Other Provisions. The bill contains a severability clause.

Appropriation: None.

Fiscal Note: Requested on January 19, 2022.

Creates Committee/Commission/Task Force that includes Legislative members: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: This is a modest proposal that is a constitutional regulation of disinformation. The disclosure requirements are comparable to requirements in other campaign materials. This will allow the voting public to understand the material they look at. If we can identify this media immediately, we can report it to media platforms and stop its spread. Synthetic media could be produced by outside actors trying to undermine the electoral process, not just opposing campaigns.

CON: This is an end run around the First Amendment. We agree with the idea behind the bill, but terms such as satire are ill-defined, and there is a potential for abusing the cause of action.

OTHER: Broadcasters appreciate that this draft takes into account previous concerns about conflicts with federal communications laws. The way the bill is written now, it would provide the Public Disclosure Commission jurisdiction over the issue. If the intent is to create a private cause of action only, that must be specified. There are concerns about liability for the distribution of synthetic media—existing law only regulates sponsors of electioneering communications, not those who share the media.

Persons Testifying: PRO: Senator David Frockt, Prime Sponsor; Steve Hobbs, Secretary of State.

CON: Jeff Pack, Washington Citizens Against Unfair Taxes.

OTHER: Mark Allen, Washington State Association of Broadcasters; Sean Flynn, Public Disclosure Commission.

Persons Signed In To Testify But Not Testifying: No one.